

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
PETEDGE, INC.,	)	
Plaintiff,	)	
	)	CIVIL ACTION
v.	)	
	)	Civil Action No. 04 10807 MEL
THE KYJEN COMPANY, INC.	)	
Defendant	)	
_____	)	

JOINT STATEMENT

Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 16.1(B), counsel for the plaintiff and counsel for the defendant in the subject action have conferred via telephone conference. The parties now propose the following Joint Statement pursuant to L.R. 16.1(D). To the extent that the parties differ as to the proposed pre-trial schedule, that is indicated by the plaintiff's and defendant's positions being set forth separately. In summary, the parties expect discovery to be completed in February of 2005 and to be ready for trial in June or July of 2005. This action includes ten (10) separate counts of infringement filed by the defendant involving at least twelve (12) different products. Therefore, this case is fairly complex.

1. PREDISCOVERY DISCLOSURES

Pursuant to Local Rule 26.2(A), the parties will exchange the information required by Fed. R. Civ. P. 26(a)(1) by September 13, 2004.

2. DISCOVERY PLAN

The parties propose to the court the following Discovery Plan:

a. PetEdge, Inc.

Discovery will be needed regarding alleged infringement, evidence of confusion, third party uses and the subject matter of each of the parties' claims and defenses in connection with allegations concerning the defendant's alleged trademarks, trade dress and copyrights, including Copyright Registration Nos. VA 999-576, VA 1-015-297, VA 1-248-235 and VA 1-248-236, also including the validity of said trademarks, trade dress and copyrights; the enforceability of said trademarks, trade dress and copyrights; and damages.

The Kyjen Company, Inc.

Kyjen expects to conduct discovery regarding the extent of PetEdge's sales of its accused products and its profits on those sales. Kyjen also expects to conduct discovery regarding the process by which PetEdge designed the accused products and any consumer confusion regarding the source of PetEdge's products.

b. All discovery is to be completed by February 28, 2005 except with respect to discovery regarding experts.

c. PetEdge, Inc.

The parties are limited to sixty Interrogatories to any other party. Answers thereto are due thirty days after service.

The Kyjen Company, Inc.

Kyjen sees no reason to depart from the limit of 25 interrogatories set

forth in Fed.R.Civ. P.33.

d. The parties are limited to one hundred requests for admission to any other party, and the authenticity of documents may be established through requests for admission. Responses thereto are due thirty days after service in accordance with the Federal Rules.

e. PetEdge, Inc.

The parties are limited to three separate sets of request for production to any other party. Responses thereto are due thirty days after service in accordance with the Federal Rules.

The Kyjen Company, Inc.

Kyjen does not believe there should be a limit to the number of separate sets of document requests because small, carefully tailored additional sets of document requests often prove to be necessary after a deposition or receipt of documents. Kyjen also does not believe there should be a limit to the number of individual document requests. However, if the court is inclined to impose a limit, Kyjen would recommend 75.

f. The parties are limited to ten depositions by the plaintiff and ten depositions by the defendant, including depositions of fact witnesses and expert witnesses, without leave of court. A deposition of up to 7 hours taken pursuant to Rule 30(b)(6) shall count as one deposition.

g. Expert witness reports under Rule 26(a)(2) are due from the parties by March 31, 2005. Depositions of experts will be completed by April 30, 2005.

3. PROPOSED SCHEDULE FOR FILING OF MOTIONS

PetEdge, Inc.

Motions to compel and/or other relief will be filed no later than forty-five days after respective responses to discovery are due, or forty-five days after receipt of respective discovery responses.

Motions in connection with depositions will be filed no later than forty-five days following receipt of the transcript of the respective deposition.

Motions, including summary judgment motions, but excluding motions regarding the conduct of trial, will be filed by May 30, 2005.

The Kyjen Company, Inc.

Kyjen recommends that motions to compel written discovery or deposition testimony be filed no later than 20 days after the close of fact discovery; and that motions to compel expert deposition testimony be filed no later than 20 days after the close of expert discovery.

Kyjen agrees that motions for summary judgment and partial summary judgment should be filed no later than May 30, 2005.

4. OTHER ITEMS

PetEdge, Inc.

- a. The plaintiff requests that a Pre-Trial Conference take place during June of 2005. PetEdge expects to be ready for trial in June of 2005.
- b. Settlement may be possible, and the plaintiff requests the use of alternative dispute resolution procedures such as mediation by a Magistrate Judge.
- c. Trial is expected to take approximately two full weeks.
- d. The plaintiff does not consent to trial by a Magistrate Judge.

All dates herein are subject and subordinate to the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the District of Massachusetts, and Court Orders, including Orders pursuant to any motions by the parties.

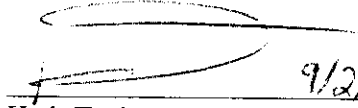
The Kyjen Company, Inc.

- a. Kyjen recommends that the pretrial conference take place in early July 2005, to allow the Court time to resolve summary judgment motions filed as late as May 30, 2005.
- b. Kyjen agrees that mediation by a Magistrate Judge may help advance settlement.
- c. Kyjen believes the parties should be able to complete trial in one week.
- d. Kyjen does not consent to trial by a Magistrate Judge.

5. CERTIFICATION (L.R.16.1(D)(3))

Attached please find the parties' certifications pursuant to L.R. 16.1(D)(3).

Respectfully submitted,  
PetEdge, Inc.  
By its attorneys,

  
9/2/04

Kirk Teska  
Iandiorio & Teska  
260 Bear Hill Road  
Waltham, MA 02451-1018  
Tel: (781) 890-5678  
Fax: (781) 890-1150  
E-mail: kirk@iandiorio.com

Respectfully submitted,  
The Kyjen Company, Inc.  
By its attorneys,

  
9/1/04

Paul A. Stewart  
Knobbe, Martens, Olson & Bear LLP  
2040 Main Street, 14<sup>th</sup> Floor  
Irvine, CA 92614  
Tel: (949) 760-0404  
Fax: (949) 760-9502  
E-mail: pstewart@kmob.com